

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

05 CV 10355 NG

Civil Action No. \_\_\_\_\_

MARY DESMOND, THOMAS ZIOBROWSKI,  
PAUL WATTS on their own behalf and on  
behalf of other participants in the defendant ERISA  
Plans

Plaintiffs,

v.

MORTON C. BATT, ANTHONY L. SCIALABBA,  
CITISTREET, LLC, WHITE & WILLIAMS, LLP,  
SCIALABBA & MORRISON, P.C.,  
ANTHONY L. SCIALABBA & ASSOCIATES,  
P.C.  
THE STANDARD AUTOMOTIVE 401(K) PLAN,  
THE STANDARD AUTOMOTIVE EMPLOYER  
CONTRIBUTION PLAN,

Defendants.

**PLAINTIFFS' MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

Plaintiffs Mary Desmond, Thomas Ziobrowski and Paul Watts, on their own behalf and on behalf of all the other participants in the Standard Automotive Corporation 401(k) Plan and Employer Contribution Plan (the "Plans") respectfully request that the Court issue a temporary restraining order and, after hearing, a preliminary injunction in substantially the form of Exhibit 1 hereto.

In short, the temporary restraining order and preliminary injunction are sought to prevent irreparable harm to participants in an ERISA 401(k) savings plan who, over the past two years, have seen approximately *one-third* of their retirement savings consumed by extraordinary and unreasonable fees. The plan fiduciaries have violated their fiduciary duties by allowing the

*Denied - the Court will not issue a temporary restraining order. The plaintiffs are to file and serve their papers on 2/23/05.*

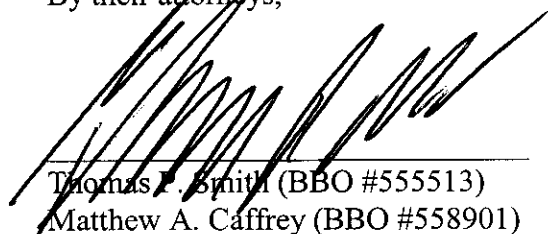
dissipation of Plaintiffs funds. Indeed, the Plan trustees have enriched themselves at the expense of the Plan participants.

In further support of this Motion, Plaintiffs rely upon the affidavits of Mary Desmond and W. Terrence Jones, Esq. and upon the memorandum of law submitted herewith.

Respectfully submitted,

Plaintiffs,

By their attorneys,



Thomas P. Smith (BBO #555513)

Matthew A. Caffrey (BBO #558901)

CAFFREY & SMITH, P.C.

300 Essex Street

Lawrence, MA 01840

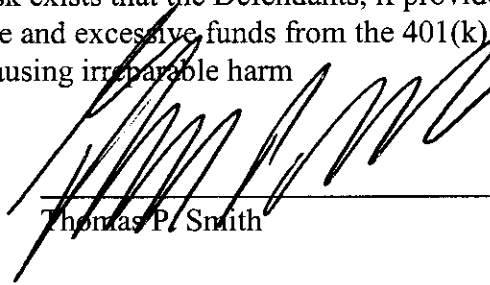
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Dated: February 23, 2005

**Fed. R. Civ. P. 65(b) Certification**

I, Thomas P. Smith, counsel for Plaintiffs certify pursuant to Fed. R. Civ. P. 65(b) that I have not provided notice to defendants or their counsel of this request for a temporary restraining order. As shown from the facts set forth in the affidavits of Mary Desmond and W. Terrence Jones submitted herewith, a substantial risk exists that the Defendants, if provided with advance notice, may withdraw further unreasonable and excessive funds from the 401(k) savings accounts of Plaintiffs and other Plan Participants causing irreparable harm



Thomas P. Smith